

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**KATHY KELLY, as mother and next
friend for DEREK KELLY, a minor**

Plaintiff,

vs.

**BOARD OF EDUCATION OF
MCHENRY COMMUNITY HIGH
SCHOOL DISTRICT 156 and individual
members of the Board of Education,
MARY KAY LOSCH, LORI NELSON,
DEBORAH JACOBS, THOMAS
WAGNER, DAVID BOGER, DIANE
VIDA, and BOB GLASCOTT, JR.**

Defendants.

Case No. 06 C 1512

**Judge Kocoras
Magistrate Judge Levin**

DEFENDANTS' ANSWER TO COUNTS I AND IV OF PLAINTIFF'S COMPLAINT¹

Defendants, Board of Education of McHenry Community High School District #156, individual members of the Board, Mary Kay Losch, Lori Nelson, Deborah Jacobs, Thomas Wagner, David Boger, Diane Vida and Bob Glascott, Jr., by and through their attorneys, Franczek Sullivan P.C., hereby submits its answer to Counts I and IV of Plaintiff's Complaint as follows:

1. THE BOARD OF EDUCATION OF MCHENRY COMMUNITY HIGH SCHOOL DISTRICT 156 is located at 4716 W. Crystal Lake Road, McHenry County, IL 60050 is an agency with quasi-judicial function.

ANSWER: Defendants admit that the Board of Education of McHenry Community High School District 156 is located at 4716 W. Crystal Lake Road, McHenry County, IL 60050. Defendants deny the remaining allegations contained in Paragraph 1 of the Complaint.

¹ Defendants have filed a motion to dismiss counts II and III of Plaintiff's Complaint.

2. Defendants MARY KAY LOSCH, LORNI NELSON, DEBORAH JACOBS, THOMAS WAGNER, DAVID BOGER, DIANE VIDA, AND BOB GLASCOTT, JR. are decision making members of the Board of Education.

ANSWER: Defendants admit the allegations contained in Paragraph 2 of the Complaint.

COUNT I

PETITION FOR A WRIT OF CERTIORARI

3. On January 12, 2005, a Hearing Officer for the Board of Education held a conference to discover facts related to a charge against Derek Kelly for violating policy 8.21 of the School District 156 against “gang activity” that prohibits, “any act in furtherance of a gang and possession for use of gang symbols, such as drawings, hand signs, or attire.”

ANSWER: Defendants admit the allegations contained in Paragraph 3 of the Complaint.

4. It was alleged that Derek Kelly’s drawing of a crown on his class agenda violated school policy. Derek’s charge alleges two violations of the schools gang policy, prior to this incident. The first incident involved a drawing of a “T” in the shape of a pitchfork on Derek’s assignment; the other incident involved a crown drawn on a piece of Derek’s art work.

ANSWER: Defendants admit the allegations contained in Paragraph 4 of the Complaint.

5. On January 18, 2006 the Board of Education sent a letter to Kathy Kelly informing her that Derek is expelled for the remainder of the school year. This was a final decision from the Board, and the expulsion is arbitrary, capricious, and unreasonable.

ANSWER: Defendants admit that the Board of Education sent a letter to Kathy Kelly inform her that Derek would be expelled for the remainder of the 2005-2006 school year. Defendants also admit that Derek’s expulsion was a final decision from the Board. Defendants deny the remaining allegations contained in Paragraph 5 of the Complaint.

COUNT IV

INJUNCTIVE RELIEF

17. All paragraphs 1-16 are realleged as if alleged herein.

ANSWER: Defendants deny the allegations contained in Paragraph 17 of the Complaint.

18. The Defendants, and each of them, by expelling Derek Kelly for the remainder of the semester, have deprived Derek of his property interest in public education, and violated

Constitutional rights under the First, Fourth, and Fourteenth amendments as alleged in paragraphs 11-1 above. These rights require this Court's protection.

ANSWER: Defendants deny the allegations contained in Paragraph 18 of the Complaint.

19. Plaintiff has no adequate remedy at law to protect him from being deprived of his interest in public education.

ANSWER: Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. Derek is a poor student, struggling with his grades. Derek is a reclassified freshman in high school. Any further delay in his education, due to suspension, would cause irreparable harm.

ANSWER: Defendants admit that Derek is a reclassified freshman in high school.

Defendants deny the remaining allegations contained in Paragraph 20 of the Complaint.

21. Due to the arbitrary, capricious, unreasonable expulsion in light of the non-threatening nature of Derek's drawings, there is a strong likelihood of success on the merits of this case.

ANSWER: Defendants deny the allegations contained in Paragraph 21 of the Complaint.

Respectfully submitted,

BOARD OF EDUCATION OF MCHENRY
COMMUNITY HIGH SCHOOL
DISTRICT 156

By: s/Julie Heuberger Yura - 06256082
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Dated: April 4, 2006

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2006 I caused the foregoing **Defendants' Answer To Counts I And IV Of Plaintiff's Complaint** to be filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Paul Shuldiner
Deidre Baumann
Riaz Zaman
Baumann & Shuldiner
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s/Julie Heuberger Yura - 06256082
Julie Heuberger Yura